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JOHN AUERBACH
COMMISSIONER

TO: John Auerbach, Commissioner, MDPH
De
FROM: Steven Chilian, Deputy General Counsel
RE: Investigation - Lab Breach in Protocols
DATE: February 29, 2012

CONFIDENTIAL MEMORANDUM

On December 1, the Department of Public Health (MDPH) became aware of an alleged irregularity in the Lab's protocols for documenting the transfer of samples submitted for forensic analysis for criminal proceedings. The Department has conducted an investigation to determine the validity of this allegation.

I. INVESTIGATION PROCESS

A. Persons Interviewed: The following persons were interviewed by me as part of this investigation and the information provided by them is incorporated herein. Union protocols were observed for all interviews. Their statements or interview summaries are attached as exhibits to this report.

1. Linda Han, Lab Director (Boston)
2. Julianne Nassif, Program Manager (Boston)
3. Charles Salemi, Lab Supervisor II (Boston)
4. Shirley Sprague, Administrative Assistant II (Boston)
5. Elizabeth O'Brien, Laboratory Supervisor I (Boston)
6. Gloria Philips, Administrative Assistant I (Boston)

7. Annie Dookhan, Chemist II (Boston)

B. Documents: Documents reviewed during this investigation include, but are not limited to, the following:

1. Relevant Statutes (M.G.L. chapter 111, sections 12 and 13)
2. Policies and Procedures – Drug Analysis Laboratories – Updated 9/24/2004
3. Copy of the relevant log book pages
4. Time Logs for Lab employees for period of June 14 to June 25

II. ALLEGATION INVESTIGATED

Whether the transfer of a number of samples from the evidence office to the Lab for testing was properly assigned and recorded in accordance with Lab protocols.

III. FINDINGS:

- A. The MDPH Drug Forensic Lab (Lab) is authorized pursuant to M.G.L. Chapter 111, sections 12 and 13 to provide chemical analysis to police authorities for the purpose of enforcement of law.
- B. Annie Dookhan (AD) is a Chemist II whose duties at the Lab at the time of the alleged event were to analyze samples submitted to the Lab for forensic testing. AD has held this position for eight years. During her tenure as chemist she has had an exemplary record of performance and was highly regarded by her peers for her work ethic and professionalism. She has no record of any disciplinary actions.
[REDACTED]
- C. The Lab's protocols for handling samples requires that all samples received by the Lab for testing be given a unique sample identifier called an evidence control number (control number). The Lab uses this number to track the case samples as they undergo the testing process. All transfers of samples to and from the evidence office are required to be entered into the Lab's computer tracking system by an evidence officer and manually recorded in the office log book (log book). The log book contains a list of all samples (by sample control number) received at the Lab for testing. The evidence officer is required to record his/her initials, the date of the transfer and the initials of the person accepting receipt of the sample(s). The person receiving the sample is required in the presence of the evidence officer to record his/her initials signifying his/her receipt.
- D. The Lab became aware of a potential breach in its protocol on June 16, 2011 by evidence officer, Shirley Sprague (SS). The discovery was made by SS while entering information into

the Lab's computer from a number of evidence control cards.¹ When SS scanned the evidence envelope's bar code into the computer, the information displayed on the computer for that case did not show the sample(s) for that case as having been assigned to the chemist identified on the control card. SS had to manually input the chemist's name into the computer. This is not a necessary step when the samples are properly scanned out to the chemist by the evidence officer. SS repeated this process for a number of samples. SS also examined the log book. There were no entries to the right of the control numbers for these samples recording their transfer from the evidence office to the chemist for testing. SS contacted her supervisor, Elizabeth O'Brien (EO), by telephone to alert her of this irregularity. The primary chemist listed on the control cards as having custody of these samples was AD.

- E. EO met with SS in the evidence office that same day, June 16th, and confirmed SS's findings, i.e., there was no record of the transfer of these samples to AD in either the Lab's computer tracking system or the log book.² On June 20th, EO met with Charles Salemi (CS), Supervising Chemist for the Analysis Section, and Julie Nassif (JN), the Lab's Director of the Division of Analytic Chemistry, to brief them about the discovery. EO brought the log book to the meeting to show both JN and CS. At the time of this meeting, there were no entries in the log book documenting the transfer of the samples from an evidence officer to AD.
- F. When the log book was re-examined again on June 21, there were now entries recording their transfer from Gloria Philips (GP) to AD on June 14. A review of GP's time logs showed GP to be on leave from June 15 until June 27. Therefore, GP was unable to have made these entries.
- G. GP maintains that she was on leave between June 15 and June 27 and therefore unable to have written the entries on the 21st. Her time sheets confirm her absence from work during this period. GP was also asked to review the log book, specifically the transfers purportedly

¹ All samples are transferred in evidence envelopes that are bar coded with each sample's unique identification (control) number and are accompanied with a control card that contains the test result, the date the sample was received by the lab, the date analyzed, test result and the initials of the chemists that performed the test(s). The primary chemist who is assigned the sample performs the preliminary test(s). A separate chemist performs the confirmation test(s). The evidence envelopes are kept in the custody of the primary chemist in the chemist's lab evidence locker (a locked cabinet) while waiting testing. The results of the analysis are provided to the requesting law enforcement agency in the form of a certificate of analysis that certifies what the samples contained and its net weight. The certificate is signed by both chemists.

² The samples in question totaled 90.

made by her to AD on June 14. GP stated that the initials purporting to be hers had been written by someone else.

- H. The log book is kept in the evidence room. AD, as do all Lab staff, have access to the evidence room via a palm reader. The evidence room is normally staffed by two evidence officers. The number of evidence officers working on the 20th of June was one and the number working on June 21st was two, with one evidence officer working a half-day. The short staffing provided a greater opportunity to enter the evidence office without being observed.
- I. AD verified her initials in the log book, but indicated that she may have initialed her receipt "after the fact". That is, although the log book shows that the date of her receipt was June 14, 2011, she likely initialed her receipt for them on a later date. She acknowledged that she had seen the entry by GP but denied that it was written by her. She had no explanation as to who may have made the entry.
- J. AD was temporarily removed from her testing duties on or about June 21 and assigned other administrative duties. AD was placed on administrative leave on February 21, 2012.
- K. AD has not testified in any cases involving the 90 samples. The certificate of analysis (certificate) routinely produced by the Lab for each of the tested samples and signed by AD certified what the sample was found to contain and its net weight.
- L. The Commissioner's office first became aware of this incident on December 1, as a result of inquiries made by the Lab to Human Resources concerning the possible reassignment of AD in early December. The Lab's failure to report this incident to Central Office was based on the Lab's lack of appreciation for its potential legal significance and their opinion that the integrity of the test results had not been affected. There is no evidence to suggest that the integrity of the results were impacted by the documentation issue with the log book.
- M. The Lab has taken a number of steps to minimize any reoccurrence of this nature. The Lab has revised its protocol for handling test samples, to include a protocol for reporting discrepancies and has instituted a new policy that limits access to the evidence office to evidence officers only with all transfers of samples to chemists for testing conducted through the evidence office service window. Finally the Lab is also looking at the cost feasibility of adding new security measures such as surveillance cameras.

III CONCLUSIONS

Based on a preponderance of the evidence collected during the course of this investigation through interviews and review of documentation, it can be concluded that AD failed to follow Lab protocols for the transfer and documentation of samples for testing, and subsequently created a false record of said transfers. The facts support that the log book was examined by three persons after June 16 and prior to June 21, each of whom stated that there were no written entries next to the sample control numbers for the identified samples that documented their transfer for testing to AD. When the log book was re-examined again on June 21, the previously blank pages for these samples were "filled in". The log book now showed them as having been transferred from GP to AD on June 14. GP could not have written these entries as she was on leave from June 15th through the 27th and, as noted in the findings section, was emphatic after having reviewed the log book that the entries were not in her hand writing. Finally, visual inspection of the log entries supports that the entries for GP and AD were likely written by the same person. While AD did not claim responsibility for writing GP's initials she did verify that the initials signifying her receipt of the samples was in her handwriting and acknowledged that their handwriting is similar. If you eliminate GP as authoring the log entries, the only person with both motive and opportunity to have completed them is AD. The most likely scenario as supported by the evidence is that AD retrieved the samples from the evidence office for testing without following Lab protocols and later compounded this error by creating false documentation of the transfer after the fact.

INTERVIEW SUMMARY/STATEMENT OF GLORIA PHILIPS

Location:	MDPH Lab, Jamaica Plain
Date and Time	12/22/11; 10:00 pm
Interviewer	Steven Chilian, Deputy General Counsel
Union Representation	Declined

The witness, Gloria Philips (GP) stated that she is currently employed at the Lab as an Evidence Officer. Her duties involve processing samples submitted to the Lab for forensic testing to insure compliance with Lab protocols.

GP recalled having a conversation with Elizabeth O'Brien (EO) in June regarding an irregularity in lab protocols. She stated that she recalled being contacted by EO, her supervisor, and asked whether she had assigned any samples to a chemist without scanning it into the Lab's computer tracking system or documenting the transfer in the evidence office log book. According to GP, she responded by stating she would never transfer any samples for testing without creating a record of the transfer as required. She was told that the assigned chemist for the samples in question was Annie Dookhan (AD).

GP stated that when she returned to work at the Lab she met with EO and was provided a copy of the log book and was asked to authenticate her initials. She was unable to do so. She told EO that the entries and that the initials, "GP", were not in her handwriting. She told EO that she did not write the entries. GP stated that EO asked her to keep their conversation private. GP states that she never spoke to AD about it. She has had no further contact with EO about the matter.

I handed the witness a copy of the relevant log book entries and asked her to review them and tell me whether or not they were written by her. She stated that they were not in her handwriting. She explained that she writes her numbers differently and always includes the year, not just the month and day. She also noted that the initials, "AD" that appear in the log book documenting both the transfer to and receipt of the sample appear to have been written by the same person. She was emphatic that she was not the person responsible for writing the entries.

I, Gloria Philips, have been provided an opportunity to review the above interview summary prepared by Steven Chilian and to make any changes. I hereby adopt this summary as my own and declare that that the information contained therein is a true and accurate.

Signed under the penalties of perjury this 9th day of, Feb. 2012.


Gloria Philips

INTERVIEW SUMMARY/STATEMENT OF JULIE NASSIF

Location	MDPH Lab, Jamaica Plain
Date and Time	12/20/11; 11:00
Interviewer	Steven Chilian, Deputy General Counsel
Union Representation	N/A

The witness, Julie Nassif, (JN) is the Lab's Director of the Division of Analytic Chemistry. JN first became aware of the matter on June 17, via an email from Elizabeth O'Brien (EO) requesting a meeting with her and Charles Salemi (CS) regarding an irregularity in lab protocols.

JN met with CS and EO on June 20. She was briefed by EO regarding the lack of documentation in the log book for a number of samples that had been transferred to Annie Dookhan (AD) for testing. EO brought the log book to the meeting to show both JN and CS. At this meeting there were no entries in the log book for the samples in question – no entries documenting the transfer of samples from an evidence officer to AD. According to JN, the three discussed the issue and sought to meet with AD immediately but she was unavailable. A meeting with AD was planned for the next day. JN also notified Linda Han (LH) the Lab Director later that same day and briefed her on the situation.

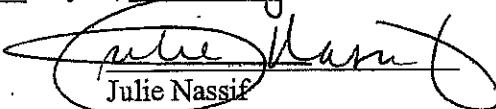
On 6/21/2011, JN with CS, and EO met with AD. According to JN, just prior to this meeting, EO went back to retrieve the log book for the meeting. She discovered that the chain of custody for the suspect samples had been filled in. The log book now showed entries by Gloria Philips (GP) documenting the transfer of the samples to AD on June 14, 2011.

The group confronted AD and sought an explanation. AD asserted that the Evidence Officer, GP, had provided her the samples as annotated in the log book. She maintained this stance even with knowledge that the log book had been observed to be blank on the 20th for the samples in question and further that GP's last duty day was 6/14.

According to JN, Gloria Philips (GP) was contacted at home by EO. She denied any knowledge or responsibility of the entries in the log book. When GP returned to work on the 26th, she was asked to examine the log book. According to JN, GP stated that the initials in the log book were not hers. Based on this information, JN temporarily removed AD from testing and discussed with LH.

I, Julie Nassif, have been provided an opportunity to review the above interview summary prepared by Steven Chilian and to make any changes. I hereby adopt this summary as my own and declare that the information contained therein is a true to the best of my recollection.

Signed under the penalties of perjury this 1st day of February 2012


Julie Nassif

INTERVIEW SUMMARY / STATEMENT OF CHARLES SALAMI

Location	MDPH Lab, Jamaica Plain
Date and Time	12/21/11; 1:30 pm
Interviewer	Steven Chilian, Deputy General Counsel
Union Representation	Paul Donahue

The witness, Charles Salemi (CS) supervises the analysis section of the Lab. CS states that he first became aware of irregularity in Lab protocol via an e-mail sent from Elizabeth O'Brien (EO) on June 16, 2011.

CS met with EO (Elizabeth O'Brien) on the same day and was showed the log book. There were no entries showing the transfer of the samples in question from an evidence officer to chemist, Annie Dookhan (AD), for testing. EO also briefed CS on her conversation with Shirley Sprague (SS) and her actions to date.

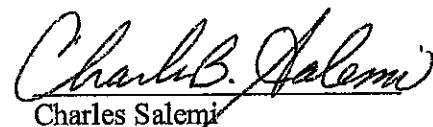
CS states that he, along with EO, met with JN that same day. EO brought the log book to the meeting to show JN and to explain what had been discovered. At the meeting CS observed the log book to be blank. After being briefed by EO, all three agreed that the next step was to talk with AD to get her explanation.

According to CS, on June 21, just prior to the meeting with AD, the blank log book pages for the samples in question were discovered by EO to have been filled in. The log book now contained entries for the samples in question showing that the samples had been transferred from Gloria Philips to AD on June 14, 2011.

CS along with EO and JN met with AD on 6/21. AD was confronted with the information and asked for an explanation. She was unable to do so. She stated she could understand why they might think she wrote the entries, but had no recollection of who transferred the samples to her.

I, Charles Salemi, have been provided an opportunity to review the above interview summary prepared by Steven Chilian and to make any changes. I hereby adopt this summary as my own and declare that that the information contained therein is a true and accurate.

Signed under the penalties of perjury this 31st day of, JANUARY 2012.


Charles Salemi

INTERVIEW SUMMARY/STATEMENT OF LINDA HAN

Location:	MDPH Lab, Jamaica Plain
Date and Time	12/20/11; 10:00am
Interviewer	Steven Chilian, Deputy General Counsel
Union Representation	N/A

The witness, Linda Han (LH) is the Lab's Director. According to LH, she had no direct involvement in the Lab's investigation, but was kept apprised by Julie Nassif (JN), the Lab's Division Director for Analytic Chemistry. LH states that JN brought the matter to her attention towards the end of June. The issue was viewed at that time as an administrative issue regarding documentation; there was never any concern as to the integrity of the test results. The matter was accordingly never reported to Central Office or HR, but handled internally. LH stated that, in retrospect, had she had a better appreciation of the potential legal implications, she would have reported it.

According to LH, JN temporarily removed Annie Dookhan from testing responsibilities, but with the intention of returning her at a later time. LH was in agreement with this approach as AD had no past issues in her record, had been regarded as an outstanding performer, and, moreover, was not far removed from

I, Linda Han, have been provided an opportunity to review the above interview summary prepared by Steven Chilian and to make any changes. I hereby adopt this summary as my own and declare that that the information contained therein is a true and accurate.

Signed under the penalties of perjury this 31 day of, January 2012.


Linda Han

INTERVIEW SUMMARY/ STATEMENT OF SHIRLEY SPRAGUE

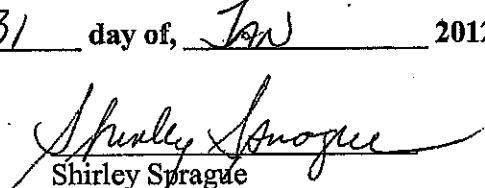
Location	MDPH Lab, Jamaica Plain
Date and Time	12/21/11; 3:00 pm
Interviewer	Steven Chilian, Deputy General Counsel
Union Representation	Declined

The witness, Shirley Sprague (SS) is an Evidence Officer. She was asked to recall whether she had a conversation with Elizabeth O'Brien (EO) about an issue concerning the transfer of samples to AD in June 2011.

SS responded by recounting an event that occurred in June. She stated she had been entering the results from some control cards that had been submitted by AD. The computer program, however, did not show the samples as having been assigned to her for testing. SS stated that this was the first time she had experienced this issue. The witness stated that she went through about 5 or 6 samples and then called Elizabeth O'Brien to inform her as this was very "weird." She stated that she also checked the log book and noted that there were no entries documenting that the samples had been transferred to the AD for testing. SS had no further involvement in the case.

I, Shirley Sprague, have been provided an opportunity to review the above interview summary prepared by Steven Chilian and to make any changes. I hereby adopt this summary as my own and declare that that the information contained therein is a true and accurate.

Signed under the penalties of perjury this 31 day of, Jan 2012.


Shirley Sprague

INTERVIEW SUMMARY/STATEMENT OF ELIZABETH O'BRIEN

Location	MDPH Lab, Jamaica Plain
Date and Time	12/21/11; 10:00 am
Interviewer	Steven Chilian, Deputy General Counsel
Union Representation	Paul Donahue

The witness, Elizabeth O'Brien (EO) supervises the Lab's evidence officers. She was contacted on June 16, 2011 by Shirley Sprague (SS), one of the Lab's evidence officers. According to EO, SS couldn't understand why, as she was entering test results from a number of drug control cards, the name of the primary chemist identified on the cards, Annie Dookhan (AD) was not in the computer as having been assigned the samples for testing. SS told EO that she had to manually enter AD's name which should not have been necessary if the samples had been properly assigned. According to the witness, SS felt this very "weird", enough so, to call her.

After speaking with SS, EO checked for herself. She noted that none of the samples identified by SS had documentation showing that they had been transferred from the evidence office to a chemist for testing. According to EO, when an Evidence Officer receives a sample for testing, the sample is given a unique sequenced number called a control number that allows it to be tracked through the testing process. When a sample is assigned to a Lab chemist, the control number (via a bar code) is scanned into the Lab's computer tracking software and the name of the chemist who has been assigned to test the sample is automatically entered into the computer.

According to EO, she then checked the evidence office log book (log book) and noted that none of the samples showed documentation that they had been transferred by an evidence officer to the Lab for testing. There were no entries in the log book connected with these samples. She then proceeded to check the Lab's computer. The computer program showed that the samples were still in the evidence safe/office and not yet assigned.

EO stated that she did not make a copy of the log book on June 16, but did contact Charles Salemi (CS), AD's Supervisor, about her discovery on June 17. The witness and CS together, went through the same process as the witness had done on her own before, including an examination of the log book. CS confirmed her findings. EO e-mailed Julie Nassif (JN) that day seeking a meeting to discuss the matter.

According to EO, she met CS and JN on June 20. The meeting lasted approximately one hour. EO brought the log book to this meeting. The log book, as before, contained no entries for the samples in question. At the conclusion of the meeting, they all agreed that they needed to talk to AD.

On June 21, 2011, EO, CS, and JN met with AD. Prior to this meeting, EO went back to get the log book to bring to the meeting. When she examined the log book this time, she noted that the log book entries for the relevant samples now showed them as having been transferred to AD by Gloria Philips (GP) on June 14, 2011.

At the meeting, AD was confronted with this information. AD was shown the log book entries and told that they had been witnessed to be blank on the 16th. AD was also told how they were made aware of the issue by SS. Finally, AD was told that GP's last work day was on 6/14 and that she could not have written those entries. According to EO, JN stated to AD that, "from where I stand it looks like you did it." AD's response was stated to be, "I can understand why you would think that." AD did not admit to writing the entries, but could not provide an explanation. According to EO, there was no discussion about what would happen to AD at this meeting.

I, Elizabeth O'Brien have been provided an opportunity to review the above interview summary prepared by Steven Chilian and to make any changes. I hereby adopt this summary as my own and declare that that the information contained therein is a true and accurate.

Signed under the penalties of perjury this 8th day of, February 2012.


Elizabeth O'Brien

INTERVIEW SUMMARY OF ANNIE DOOKHAN

Location:	MDPH Lab, Jamaica Plain
Date and Time	December 22, 2011 at 1:15 PM
Interviewer	Steven Chilian, Deputy General Counsel Joel Buenaventura, Deputy General Counsel
Union Representation	Ann M. Looney, General Counsel Massachusetts Organization of State Engineers and Scientists

Ms. Annie Dookhan (AD) has worked as a Chemist II at the MDPH Drug Forensic Lab for the past eight years. She reports to Charles Salemi. Her main duties are to analyze unknown substances for the MDPH Drug Forensic Lab.

AD provided an overview of the protocol for obtaining samples of unknown substances for testing. An evidence officer would assign the samples to her. Chemists would routinely go to a room known as "the evidence office." Within the Evidence office, there was a room known as "the safe." Only the Evidence Officers had access to the safe. An evidence officer would provide the samples, and the chemist would take the sample into his or her possession. The case samples would be bar coded with a lab control number for identification. As part of this process, the evidence officer and the chemist would record the transfer of these samples in a log book. After transfer from the evidence officer but during testing, the chemist would place the samples into a personal locker adjacent to the chemist's laboratory bench. Only the chemist and the lab manager had keys to this locker. At any given time, there were about twenty to fifty samples kept in AD's locker until either she returned the samples after completion of testing or she had taken new samples from the evidence officer.

AD verified the security measures created for the MDPH Drug Forensic Lab. AD said that there was a palm print required for access to the evidence office. AD had access to the evidence office, but not the safe. If she was allowed into the safe, it would only be in the presence of one of the evidence officers. AD would go to the evidence office only to receive samples or if she needed assistance in looking up a drug name.

AD was asked to provide her recollection of the reported incident of June 2011. AD was also provided a copy of pages of the log book involving ninety affected samples dated June 14, 2011.

AD recalled meeting with Betsy O'Brien, Chuck Salemi, and Julie Nassif on June 21, 2011. AD had no recollection of how she obtained the samples in question. She did not remember which evidence officer gave the said samples to her.

When queried regarding the laboratory log book, which included the initials of the evidence officer "GP" and AD, AD verified her own initials. AD said that she may have

initial receipt of the samples "after the fact." That is, although the lab book is dated that AD received the samples on June 14, 2011, she recalls that she likely initially received the samples on a later date. Although she acknowledged that there had been initials from the evidence officer "GP", she denied that it was her writing. However, AD indicated that "she writes that way."

AD acknowledged that there would likely be problems testifying regarding the ninety samples because of the aforementioned discrepancies in the log book. AD said that the samples would likely have been kept in her locker after receipt from the evidence officer and the testing process which include her initial test and a confirmatory test from another chemist in the lab.

AD recalls that she had not been questioned regarding the log book when she has given testimony in a criminal matter. AD said she would cooperate in identifying any cases in which she had been subpoenaed by the District Attorney if provided a copy of the affected sample numbers.